

**MILITARY COMMISSIONS TRIAL JUDICIARY
GUANTANAMO BAY, CUBA**

UNITED STATES OF AMERICA v. KHALID SHAIKH MOHAMMAD, WALID MUHAMMAD SALIH MUBARAK BIN ‘ATTASH, RAMZI BIN AL SHIBH, ALI ABDUL AZIZ ALI, MUSTAFA AHMED ADAM AL HAWSAWI	AE 006DD RULING Defense Request For Excusal of Detailed Military Defense Counsel 17 April 2020
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1. **Procedural History.** On 14 April 2020, Counsel for Mr. Mohammad moved¹ to excuse Detailed Military Defense Counsel, Lieutenant Colonel (LtCol) Derek A. Poteet, U.S. Marine Corps from further representation of Mr. Mohammad, effective 30 June 2020, due to his permanent change of station (PCS) orders from Military Commissions. The Government does not oppose.²

2. **Law.**

a. The Military Commissions Act of 2009 requires a Defense Counsel be detailed to represent the Accused facing trial by Military Commission. 10 U.S.C. § 948k(a)(1). For cases referred capital, the Accused has a right, “to the greatest extent practicable[,]” to be represented by a counsel who is “learned in applicable law relating to capital cases.....” 10 U.S.C. § 949a(2)(C)(ii). Assistant and associate defense counsel “may” be detailed to represent the Accused. 10 U.S.C. § 948k(a)(2).

¹ AE 006CC (KSM), Mr. Mohammad’s Motion For Excusal of LtCol Poteet as Defense Counsel, filed 14 April 2020.

² *Id.* at para. 6.

b. R.M.C. 505(d)(2)(B), in relevant part, requires that “after an attorney-client relationship has been formed between the accused and any counsel for the accused, only the military judge may excuse or change counsel upon a showing of good cause on the record.”³

3. Findings of Fact.

a. On 20 April 2012, the Chief Defense Counsel detailed LtCol Poteet as “Detailed Defense Counsel” to represent Mr. Mohammad.⁴

b. LtCol Poteet formed an attorney-client relationship with Mr. Mohammad and entered an appearance on his behalf on 20 April 2012.⁵

c. LtCol Poteet is scheduled to PCS from Military Commissions in July 2020.

d. If LtCol Poteet is permanently excused, Mr. Mohammad will be represented by Lieutenant Peter Berg, U.S. Navy, and Major Maria Delimata, U.S. Air Force as Detailed Military Defense Counsel (10 U.S.C. § 948k(a)(1)), Mr. David Nevin, Ms. Denise Leboeuf, and Ms. Rita Radostitz as Detailed Defense Counsel and Mr. Gary Sowards as Learned Counsel (10 U.S.C. § 949a(2)(C)(ii)).

e. Mr. Mohammad consents to LtCol Poteet’s permanent excusal.⁶

4. **Conclusion.** Counsel for Mr. Mohammad have established good cause on the record to permanently excuse LtCol Poteet from further representation of Mr. Mohammad before this Commission. The Commission concludes that Mr. Mohammad will continue to be adequately

³ See also Military Commissions Trial Judiciary Rule of Court (RC) (1 September 2016) 4.4.b requiring military judge approval to excuse defense counsel who have entered an appearance before the Commission.

⁴ AE 012 (KSM et al), Detailing and Appearance of Defense Counsel, filed 20 April 2012.

⁵ Unofficial/Unauthenticated Transcript of the *U.S. v. Khalid Shaikh Mohammad, et al.* Motions Hearing Dated 5 May 2012 from 11:38 A.M. to 12:40 P.M. at pp. 74-75.

⁶ Counsel for Mr. Mohammad have proffered (but not provided evidence) that Mr. Mohammad consents to LtCol Poteet’s permanent excusal. Because Mr. Mohammad continues to be represented by statutorily required Detailed Military Counsel and Learned Counsel, the Commission accepts the proffer of Mr. Mohammad’s consent made by his Defense Team.

represented by his detailed Military Defense Counsel, his Learned Counsel, and other defense counsel detailed to his Defense Team.

5. **Ruling.** The motion to permanently excuse LtCol Poteet is **GRANTED** effective 30 June 2020.

The granting of this motion shall not constitute justification for a delay in the proceedings.

So **ORDERED** this 17th day of April, 2020.

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W. SHANE COHEN, Colonel, USAF
Military Judge
Military Commissions Trial Judiciary